

## Thomas Jefferson to George Washington, February 4, 1792, from the Works of Thomas Jefferson in Twelve Volumes. Federal Edition. Collected and Edited by Paul Leicester Ford.

TO THE PRESIDENT OF THE UNITED STATES J. MSS.

Philadelphia, February 4th, 1792.

Sir, —The late appointment of a Minister Resident to the Hague, has brought under consideration the condition of Mr. Dumas, and the question whether he is, or is not, at present in the service of the U. S.?

Mr. Dumas, very early in the war, was employed first by Dr. Franklin, afterwards by Mr. Adams, to transact the affairs of the U. S. in Holland. Congress never passed any express vote of confirmation, but they opened a direct correspondence with Mr. Dumas, sent him orders to be executed, confirmed and augmented his salary, made that augmentation retrospective, directed him to take up his residence in their hotel at the Hague, and passed such other votes from time to time as established him *de facto* their Agent at the Hague. On the change in the organization of our government in 1789, no commission nor new appointment took place with respect to him, tho' it did in most other cases; yet the correspondence with him from the Office of foreign affairs has been continued, and he has regularly received his salary. A doubt has been suggested whether this be legal? I have myself no doubt but that it is legal. I consider the source of authority with us to be the Nation.—

Their will declared through its proper organ, is valid, till revoked by their will declared through it's proper organ again also. Between 1776 & 1789 the proper organ for

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pronouncing their will, whether legislative or executive, was a Congress formed in a particular manner. Since 1789 it is a Congress formed in a different manner for laws, and a President, elected in a particular way, for making appointments & doing other Executive acts. The laws and appointments of the antient Congress were as valid & permanent in their nature, as the laws of the new Congress, or appointments of the new Executive; these laws & appointments in both cases deriving equally their source from the will of the Nation; and when a question arises, whether any particular law or appointment is still in force? we are to examine, not whether it was pronounced by the antient or present organ, but whether it has been at any time revoked by the authority of the Nation expressed by the organ competent at the time. The Nation by the act of their federal convention, established some new principles & some new organizations of the government. This was a valid declaration of their will, and *ipso facto* revoked some laws before passed, and discontinued some offices & officers before appointed. Wherever by this instrument, an old office was suspended by a new one, a new appointment became necessary; but where the new Constitution did

not demolish an office, either expressly or virtually, nor the President remove the officer, both the office and officer remained. This was the case of several: in many of them indeed an excess of caution dictated the superaddition of a new appointment; but where there was no such superaddition, as in the instance of Mr. Dumas, both the office and officer still remained: for the will of the nation, validly pronounced by the proper organ of the day, had constituted him their agent, and that will has not through any of it's successive organs revoked its appointment. I think, therefore, there is no room to doubt it's continuance, and that the receipt of salary by him has been lawful.

However I would not wish to take on myself alone the decision of a question so important, whether considered in a legal or constitutional view; and therefore submit it to you, Sir, whether it is not a proper question whereon to take the opinion of the Attorney General?

Another question then arises. Ought Mr. Dumas to be discontinued?

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I am of opinion he ought not.

1. Not at this time; because Mr. Short's mission to Madrid will occasion an immediate vacancy at the Hague again; and because by the time that will be over, his appointment at the Hague must be discontinu-

-ed altogether, unless Congress should enlarge the foreign fund.

2. Not at any time; because when, after the peace, Mr. Dumas's agency became of less importance, Congress under various views of his sacrifices & services, manifested that their continuance of him was in consideration of these, and of his advanced years & infirm state, which render it impossible for him to launch into a new line of gaining a livelihood; and they thought the continuance of moderate competence to him for moderate services, was more honorable to the U. S. than to abandon him, in the face of Europe, after & under such circumstances.